

## FACILITY USE AGREEMENT

This Facility Use Agreement ("Agreement") is made this 22 day of February, 2016, by and between Whitewater School District (the "District") and Fort HealthCare, Inc. ("FHC") (collectively, the "Parties" and individually, each a "Party").

WHEREAS, the District and FHC recognize that there are community members under the age of 18 ("Recipients") in need of private professional counseling services which can be provided on District property;

WHEREAS, FHC has the expertise and capability to provide professional counseling through FHC's behavioral health program;

WHEREAS, the District believes there is a community benefit to allowing FHC to use District facilities for the purpose of providing private professional counseling services to Recipients and FHC providing some of the private professional counseling services at no cost to Recipients;

WHEREAS, FHC desires to provide private professional counseling services to certain Recipients in need of such services by utilizing District property; and

WHEREAS, under the District's "Use of District Facilities" policy (the "Policy"), the District may grant the use of District facilities to outside groups when the District determines that it is appropriate to do so.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Term.** The term of this Agreement shall commence on March 1, 2016 and continue until June 30, 2016 (the "Term"), unless otherwise terminated by either Party as provided in Paragraph 6, below.
2. **Consideration.** The duties and understandings of the Parties described in this Agreement shall constitute the consideration exchanged between the Parties under this Agreement. The Parties hereby acknowledge and agree that neither Party is entitled to any monetary compensation from the other Party, unless otherwise stated in this Agreement.
3. **The District's Duties.**
  - (a) **Physical Space for Services.** The District shall identify and make available certain physical space or spaces on its property (the "Locations"), which are mutually acceptable to the District and FHC, in which FHC may provide Services (defined below) during the Term. The District and any of its authorized representatives and agents shall retain the full and unfettered right to enter the Locations at any time, with or without advance notice to FHC, provided the District respects Recipients' confidentiality.

- (b) **Location Services.** During the Term, the District shall provide general maintenance and upkeep of the Locations, including but not limited to regular janitorial services. The District shall be responsible for any and all costs related to general maintenance and upkeep of the Locations; provided, however, that the District may require FHC to compensate the District for certain non-routine maintenance costs which are incurred by the District as a result of this Agreement. FHC employees, agents, and representatives providing Services at the Locations may use any District facilities which are generally made available to the public, including but not limited to public restrooms.
- (c) **Wireless Internet.** Subject to any unanticipated or unintended disruptions in service, the District shall maintain public wireless Internet service which may be used by FHC at the Locations.

4. **FHC's Duties.**

- (a) **Provision of Services.** Initial appointment to establish FHC's relationships with Recipients will be held at either the school or at one of the FHC Behavioral Health sites. Recipients will be FHC's clients/patients while receiving Services under this Agreement. FHC will obtain permission from its client and/or the client's parent/guardian, as appropriate, to share the client's name with the District for purposes of facilitating this Agreement. FHC may provide the private professional services of a licensed professional counselor to Recipients under the age of 18 ("Services") at the Locations during the Term, on days and times as mutually agreed upon between the Parties. The District will not be involved nor sponsor or provide any assistance to FHC in the provision of Services at the Locations, except as explicitly provided in Paragraph 3, above. FHC shall not provide any Services under this Agreement that are services covered by the Individuals with Disabilities Education Act ("IDEA") and/or Chapter 115 of the Wisconsin Statutes.
- (b) **No-Charge Clients.** It is the intention of the Parties that FHC provide at least ten percent (10%) of Services at the Locations at no charge to Recipients. FHC will provide the District with a quarterly statement (due end of June, 2016) which shall include the following information:
  - (i) Number of Recipients provided Services at the Locations during the previous calendar months; and
  - (ii) Number of Recipients provided Services at the Locations free of charge during the previous calendar months.

Notwithstanding the foregoing, any statements required to be provided by FHC under this Paragraph 4(b) should not contain any information which would otherwise constitute protected health information under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") or any other federal, state, or local law which restricts the disclosure of Recipients' health information.

- (c) **Equipment.** Except as otherwise provided above, FHC shall be responsible for providing any and all equipment necessary to provide the Services at the Locations, including but not limited to any computer or other technological device necessary for the provision of such Services.
- (d) **Mail/Deliveries.** The District shall not receive mail (e.g., U.S. Mail, Federal Express, UPS or any other type of document delivery) for FHC at the Locations. FHC shall collect mail and/or document deliveries relating to the provision of Services at a site separate from the Locations.
- (e) **File Storage.** FHC shall be responsible for the storage at an off-site location of any Recipient's files or records used, created, or maintained in the course of providing Services at the Locations. No files, records, notes, documents, or any other information related to the provision of Services may be left at the Locations when not occupied by FHC.
- (f) **Legal Compliance.** FHC shall be solely responsible for providing Services at the Locations in accordance with any applicable federal, state, or local law. Such responsibility includes but is not limited to ensuring that anyone who provides Services at the Locations or assists in the provision of Services at the Locations is appropriately licensed under any applicable federal, state, or local law.
- (g) **Insurance.** Pursuant to the Policy, FHC shall carry a general liability policy that includes the District as a named insured party and acknowledges FHC shall be primarily liable for any damage to District property in consequence of its use of school grounds, buildings, facilities, or equipment.
- (h) **Damage Reimbursement.** FHC shall reimburse the District for any damage to District property resulting from or related to the provision of Services under this Agreement. This obligation includes, but is not limited to, any damage caused by FHC's employees, agents, and Recipients who are signed-in to receive Services (see Paragraph 5(a), below).

5. **Nature of the Parties' Relationship.**

- (a) **Responsibility for Recipients Receiving Services.** During the Term, Parties agree that any and all Recipients who are District pupils must be released from school by his/her parent or legal guardian in accordance with the District's attendance reporting policy for the period of time necessary to attend and receive Services. At no time, from when a District pupil is released from school in order to receive Services and until such time as he/she signs out as set forth below, will the District be responsible for the student. In addition, the Parties shall develop a mutually acceptable sign-in/sign-out procedure at the Locations which requires FHC to maintain a written sign-in/sign-out log (which includes Recipient's name, date, and sign-in and sign-out times), and shall ensure that Recipients sign in upon entering the Locations to receive Services, and sign out upon leaving the Locations. The Parties acknowledge and agree that FHC, and not the District, is fully responsible

for any Recipient who is signed in (and not signed out) as described above. In addition to the general indemnification described in Paragraph 5(f) below, FHC further agrees to indemnify and hold harmless the District for any and all claims involving a Recipient who was signed in to receive Services at the Locations during the event(s) or action(s) giving rise to the claim(s).

- (b) **No Employment Relationship.** The Parties acknowledge that their relationship is solely contractual, and that no employee, contractor, agent, or representative of FHC shall have an employment relationship with the District as a result of this Agreement. Likewise, no District employee, contractor, agent, or representative shall be deemed to be an employee of FHC as a result of this Agreement.
- (c) **Non-Exclusive Recommendation.** The District and its agents may provide information about FHC to District pupils if and when it is determined appropriate to do so by the District and/or its agents. However, the District shall have no obligation under this Agreement to refer any District pupils to FHC for Services. If, in the course of providing services or guidance to a District pupil, a District employee becomes aware of a pupil's need for professional counseling services, such District employee has the discretion to decide whether or not to provide information to the pupil and/or his or her parents regarding the availability of Services from FHC. Nothing under this Agreement shall be construed as restricting or precluding any employee, agent, or representative of the District from offering information about any entity which provides services of a similar nature to those bring provided by FHC at the Locations.
- (d) **Sharing of Information.** The Parties acknowledge that, as a result of this Agreement, they may be directed by a District pupil and/or his or her parent or legal guardian to share what would otherwise be legally protected confidential information. With regard to such information, the Parties agree as follows:
  - (i) Absent valid authorization by a District pupil, or the pupil's parent or legal guardian (as applicable), the Parties will not share information which they are legally required to keep confidential by any applicable federal, state, or local law;
  - (ii) Upon the receipt of valid authorization requesting that confidential information be shared between the Parties, the Parties agree to take any and all reasonable actions related to the sharing of the information which may be requested by either Party, or required by law, including but not limited to entering into a business associate agreement under HIPAA; and
  - (iii) Upon the receipt of a valid consent from a District pupil's parent or legal guardian or, the District pupil if he/she is at least 18 years of age, the District will disclose to FHC copies of a pupil's education records, as defined by the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99) and Wisconsin's Pupil Records Law (Wis. Stats. § 118.125). FHC acknowledges and agrees that should such records be

disclosed to FHC, FHC is prohibited from re-disclosing any personally identifiable information contained in a student's education record to any other party without the prior written consent of the pupil, his or her parent or legal guardian, as appropriate.

- (e) **Marketing.** FHC will identify the District as a site for services rendered if required for licensing or other compliance purposes. The Parties agree that the Services contemplated by this Agreement shall not be referenced, discussed, or used in any way in any advertising, marketing, or other promotional materials without the express written consent of the other Party.
- (f) **Indemnification.** To the extent allowed by law, FHC shall indemnify and hold harmless the District from any and all liability, claims, damages, costs, or expenses arising out of or related to negligent acts of FHC or its agents, and from acts of FHC or its agents which would constitute a breach of this Agreement. To the extent allowed by law, the District shall indemnify and hold harmless FHC from any and all liability, claims, damages, costs, or expenses arising out of or related to negligent acts of the District or its agents, and from acts of the District or its agents which would constitute a breach of this Agreement.

6. **Early Termination.** This Agreement shall remain in effect through the end of the Term, unless terminated prior to the end of the Term as follows:

- (a) By either Party, for any reason upon fourteen (14) days written notice to the other Party; or
- (b) By the District, effective immediately upon the delivery of notice to FHC in the event:
  - (i) The District determines, in its sole discretion, that FHC has violated Section 4(f) or 5(d) of this Agreement; or
  - (ii) It is the determination of the Board of Education of the District that this Agreement be immediately terminated.

7. **Miscellaneous.**

- (a) **Violation of Law or Regulation.** This Agreement shall be construed in accordance with all applicable federal, state and local laws. In the event this Agreement or any part thereof is determined by any applicable government official to be in violation of any law, then at the option of either Party, such provision shall be deemed void and of no effect. In that event, the Parties shall, in good faith, negotiate an alternative provision which as nearly as possible, without violating the law, accomplishes the purpose and intent of this Agreement.
- (b) **Exclusivity.** This Agreement is non-exclusive as to the Parties, and shall not interfere with the right of either Party to enter into similar agreements with other parties.

- (c) **Assignability.** Neither Party may assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party.
- (d) **Non-Discrimination.** FHC warrants that, in the course of providing Services, it will not discriminate against anyone, including but not limited to District pupils, in any way in which FHC or the District would be legally prohibited from doing so.
- (e) **Amendment.** This Agreement shall not be modified, changed, or amended except by written agreement signed by the Parties.
- (f) **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subject matter herein and supersedes any prior or contemporaneous agreement, whether oral or written, of the Parties.
- (g) **Governing Law.** This Agreement shall in all respects be construed according to the laws of the State of Wisconsin, without regard to its conflict of laws principles.
- (h) **Safety & Security.** FHC will be familiar with and adhere to the District's safety and security policies and procedures including how to respond to emergency situations and participating in any drills that may occur while in the building.
- (i) **Criminal Background Checks.** FHC will be responsible for completing criminal background checks on their employees
- (j) **Notices.** Any and all notices, consents, documents, or communications provided for in this Agreement shall be given in writing and shall be personally delivered, mailed by registered or certified mail (return receipt requested), sent by courier (confirmed by receipt), or sent by facsimile (with facsimile confirmation) and addressed as follows or to such other address as the addressed Party may have substituted by notice pursuant to this Paragraph 7(j):

- (i) To the District:           Whitewater School District  
                                           Attention: Eric Runez, District Administrator  
                                           419 S. Elizabeth Street  
                                           Whitewater, WI 53190  
                                           Fax: (262) 472-8710
- (ii) To FHC:                   Fort HealthCare Behavioral Health  
                                           Attention: Michael S. Wallace, CEO  
                                           611 Sherman Avenue East  
                                           Fort Atkinson, WI 53538  
                                           Fax: (920) 568-6083

Such notice, consent, document, or communication shall be deemed given upon personal delivery or receipt at the address of the Party stated above or at any other address specified by such Party to the other Party in writing, except that if delivery is refused or cannot be made for any reason, then such notice shall be deemed given on the third day after it is sent.

- (k) **Waiver.** The waiver by either Party of the breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- (l) **Counterparts.** This Agreement may be executed electronically and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

***[Proceed to Following Page for Signatures]***

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

**WHITEWATER SCHOOL DISTRICT**

**FORT HEALTHCARE BEHAVIORAL  
HEALTH**

By:   
Eric Runez, District Administrator

By: \_\_\_\_\_  
Michael S. Wallace, CEO

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